BBMB FINANCE (HONG KONG) LTD.

v.

EDA HOLDINGS LTD. & ORS.

COURT OF APPEAL, HONG KONG
LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD GRIFFITHS
LORD GOFF OF CHIEVELEY
LORD LOWRY
[PRIVY COUNCIL APPEAL NO. 26 OF 1989]
6 FEBRUARY 1990

TORT: *Conversion of shares - Right to damages - Measure of damages - Value at date of conversion - Irreversible conversion as against temporary deprivation - Mitigation.*

In May 1981, Etek Holdings Ltd. (Etek), a shareholder in the 1st respondent, received the Etek certificate which was a bonus issue of 10,886,855 shares in the 1st respondent. This certificate and the bonus shares were held in trust for the other respondents. Five months later, this certificate and executed blank transfers were deposited with the appellant as security for a loan granted or proposed to be granted by the appellant to the 1st respondent.

However, on 14 October 1981, the appellant unlawfully delivered this certificate and shares and a further 5 million shares in the 1st respondent to Carrian Holdings Ltd., in return for a postdated cheque for HK$90 million. On this date, 14 October 1981, the market price of the 1st respondent's shares were $5.25 per share.

The postdated cheque became due on 14 November 1981 but was never presented. The appellant later received $50 million and on 4 May 1982 completed the purchase in the market of the 1st respondent's shares at the price of $2.40 per share.

The respondents then sued the appellant for damages for conversion of the Etek certificate and shares. They were awarded $5.25 per share. This is an appeal from that decision, the appellant contending that since the respondents was entitled to 10,886,855 shares of the respondents and since the respondents received 10,886,855 shares, the respondents had not suffered any damages.

Held:

[1] The general rule is that a plaintiff whose property is irreversibly converted has vested in him a right to damages for conversion measured by the value of the property at the date of conversion - *Solloway v. McLaughlin* [1938] AC 247.

[2] When the property concerned is irreversibly converted and the plaintiff loses that property, the plaintiff loses the value of the property at the date of conversion. The general rule is that the measure of damages is the value thus lost.

[3] The decision in *Solloway v. McLaughlin* is not affected by the decision in *Brandeis Goldschmidt & Co. Ltd. v. Western Transport Limited* [1981] 1 QB 864 nor by the Torts (Interference with Goods) Act 1977.

[4] The appellant sold and irreversibly converted the shareholder's certificate and the respondents became entitled to damages for conversion equal to the market price which was also the sale price.

[5] The inexplicable failure by the appellants to collect the sale price cannot mitigate or reduce the damages recoverable by the respondents and cannot alter the measure of damages.

[Appeal dismissed.]

Cases referred to:
Solloway v. McLaughlin [1938] AC 247
Strand Electric & Engineering Co. Ltd. v. Brisford Entertainments Limited [1952] 2 QB 246
Sachs v. Miklos [1948] 2 KB 23
Williams v. Archer [1847] 5 CB 318
Barrow v. Arnaud [1846] 8 QB 595
Brandeis Goldschmidt & Co. Limited v. Western Transport Limited [1981] 1 QB 864
Williams v. Peel River Land and Mineral Co. Ltd. [1886] 55 LT 689

JUDGMENT

Lord Templeman:

All the companies involved in this appeal were tainted by concealed fraud and became insolvent. The liquidator of each company, acting on behalf of innocent trade creditors of that company, disputes with the liquidators of the other companies the distribution of assets salvaged from the wreckage of all the companies. The trial Judge (Liu J) succeeded, with skill and patience, in extracting a sufficient certainty from dubious facts to enable him to decide that, applying the law to those facts, the respondent companies Eda Holdings Limited, Inland Realty Limited and Ford Finance Limited are entitled to recover from the appellant company BBMB Finance (Hong Kong) Limited ("Bumi") damages for conversion amounting to HK$28,632,425. The order of the trial Judge was upheld by the Court of Appeal (Kempster, Clough and Hunter JJA). Bumi now appeals to Her Majesty in Council. Bumi is not in a position to dispute any of the facts found by the trial Judge. The question is whether, upon the facts briefly hereafter summarised, the Courts below reached a correct conclusion in law.

In May 1981 the company Etek Holdings Limited, a shareholder in the company Eda Investments Limited ("EIL"), received certificate 364004 ("the Etek certificate") being a bonus issue of 10,886,855 shares in EIL. The Etek certificate and the bonus shares were held by Etek in trust for the respondents. On 22 September 1981 the Etek certificate together with executed blank transfers were deposited with Bumi as security for a loan granted or proposed to be granted by Bumi to EIL.

On 14 October 1981 Bumi unlawfully delivered the Etek certificate and shares and a further 5,000,000 shares in EIL to Carrian Holdings Limited in return for a cheque for HK$90,000,000 postdated 13 November 1981. The market price of EIL shares as the date they were unlawfully disposed of by Bumi was $5.75 per share and the sum of $90,000,000 represented $5.75 per EIL share. The trial Judge found, and it is not now disputed, that:

> ...the Etek shares and certificate permanently left Bumi on 14 October 1981 and were wrongly converted when it was sent to Carrian Holdings Limited against its HK$90,000,000 postdated cheque...

History does not relate what happened to the Etek certificate or to the shares comprised in the certificate after they were acquired by Carrian Holdings Limited. The postdated cheque for $90,000,000 became due for payment on 14 November 1981 but the cheque was never presented. Bumi later received some $50,000,000 which may or may not have emanated from Carrian Holdings Limited and with that sum on 4 May 1982 completed the purchase in the market of EIL shares which replaced the Etek certificate shares. The replacement shares were

purchased at the price of $2.40 per share. The respondents sued Bumi for *inter alia* damages for the conversion of the Etek certificate and shares and were awarded $5.75 per share, the value at the date of conversion on 14 October 1981 less $2.40 per share, the value of the replacement shares at the date of replacement. In this appeal Bumi contends that the respondents suffered no damage; they were entitled to 10,886,855 EIL shares and they have received 10,886,855 EIL shares.

The general rule is that a plaintiff whose property is irreversibly converted has vested in him a right to damages for conversion measured by the value of the property at the date of conversion. For this rule, there is clear authority. In *Solloway v. McLaughlin* [1938] AC 247 a company of brokers unlawfully sold shares deposited with them by a client for $65,320 and later replaced the shareholding with identical shares at a cost of $32,000. The client was awarded the difference between the sums by way of damages for conversion. Lord Atkin, delivering the advice of the board, said at p. 257:

> As to the deposited shares, in the circumstances of the case the company never had any right to deal with them ... Their disposal of the deposited shares amounted to nothing short of conversion, and the client on each occasion on which the shares were sold had vested in him a right to damages for conversion which would be measured by the value of the shares at the date of the conversion ... not knowing of the conversion, he received from the wrongdoer, and has retained, the very goods converted or their equivalent ... the only effect is that he must give credit for the value of what he has received at the time he received it and ... the damages are reduced by this amount.

Evans-Lombe, who appeared for Bumi, submitted, correctly, that there is a line of authority which establishes the basic principle that, in the assessment of damages, a plaintiff can recover the loss he has suffered, no more and no less. This principle and some of its exceptions are indicated in the judgment of Denning LJ in *Strand Electric & Engineering Co. Ltd. v. Brisford Entertainments Limited* [1952] 2 QB 246 at 253.

Evans-Lombe pointed out that damages for conversion may exceed the value of the property at the date of conversion if, the example, the property increases in value between the date of conversion and the date when the plaintiff discovers the conversion; see *Sachs v. Miklos* [1948] 2 KB 23. Also, in conversion or in detinue, where the plaintiff has only suffered temporary deprivation of his property, the appropriate measure of damages may be assessed by reference to the value at the date when the plaintiff demanded the return of the property (*Williams v. Archer* [1847] 5 CB 318) or the date when the plaintiff was prevented from reselling the property (*Barrow v. Arnaud* [1846] 8 QB 595). In *Brandeis Goldschmidt & Co. Limited v. Western Transport Limited* [1981] 1 QB 864 the plaintiffs' cargo of copper had been wrongfully detained for a period of nine months. The plaintiffs had never intended to resell the copper and failed to prove that they had suffered any damage by reason of the delay in delivery up. Brandon LJ rejected at p. 872 "the proposition that there is some universal rule of law governing the assessment of damages in cases of detention, which can be applied by rule of thumb ..." Brandon LJ cited, and in the present case Evans-Lombe relied upon, the judgment of Bowen LJ in *Williams v. Peel River Land and Mineral Co. Ltd.* [1886] 55 LT 689 at 692 where it was said *inter alia*:

> If, in an action for wrongful detention by one man of that which belongs to another, there be no substantial loss at all sustained, but the mere denial of the right, which right is vindicated in the course of the action, in such a case, there being no pecuniary damage sustained, no pecuniary compensation is given, and nominal damages will be enough; but, if a substantial loss has been suffered in consequence of the wrongful act, what those who have to redress the wrong ought to do is to give compensation for the loss. You do not give damages in an

> action for detention in poenam; it is not a paternal correction inflicted by the Court, but simply compensation for the loss ... I cannot think that the law would really lay down anything so ridiculous as that a man should be compensated whether he suffered damages or not.

Both the *Brandeis* case and the *Peel River* case were concerned with damages caused by temporary deprivation of possession and use of property. A different consideration will apply when the property is irreversibly converted and the plaintiff loses that property. The plaintiff loses the value of the property at the date of conversion and the general rule is that the measure of damages is the value thus lost. To depart from that rule in the present case would be inconsistent with *Sollowway v. McLaughlin* (*supra*). Mr. Evans-Lombe submitted that in that case Lord Atkin was only concerned to deprive the defendant of a profit. But Lord Atkin's judgment is inconsistent with this submission. Mr. Evans-Lombe also sought to argue that the effect of *Solloway v. McLaughlin* has in some way been modified by the Torts (Interference With Goods) Act 1977, joined with the decision in the *Brandeis* case. Their Lordships do not consider that the decision in *Solloway v. McLaughlin* can be affected by the *Brandeis* case or by the Act of 1977 which only came into force after the *Brandeis* case had been decided.

In the present case, on the findings of the trial Judge, Bumi sold and irreversibly converted the Etek certificate, receiving in return the cheque for $90 million, and the respondents thereupon became entitled to damages for conversion equal to the market price which was also the sale price. The inexplicable failure by Bumi to collect the sale price cannot mitigate or reduce the damages recoverable by the respondents and cannot alter the measure of damages. Their Lordships will humbly advise her Majesty that this appeal should be dismissed. The appellant must pay the respondents' costs.

Also found at [1990] 2 CLJ 1